

1 Remarks

2 Claims 3 and 10 are canceled; claims 1, 2, 4-9 and 11-14 remain in the application and  
3 claim 15 is added. In response to the objection to claim 6, claim 6 has been amended to  
4 depend from claim 5.

5 In response to the rejections based on 35 U.S.C. § 102 and 35 U.S.C. § 103,  
6 independent claims 1 and 8 have been amended to more clearly point out those aspects of  
7 the present invention to overcome the rejections and to place those claims in allowable  
8 condition. Please note that new claim 15 is also submitted.

9 The grounds of rejection under 35 USC § 102 are now discussed.

10 The Vogt reference teaches a mechanism for continuously packaging a flowable  
11 material such as cookie dough. Referring to Fig. 3 of Vogt, the material flows into multiple  
12 pockets 24 simultaneously. At column 1 of Vogt, line 7, the nature of the material is  
13 particularly identified as "flowable or moldable." A significant point of difference between the  
14 present invention and Vogt is that the present invention is directed at the packaging of a non-  
15 flowing product. The independent claims 1, 8 and 15 all include language which refers to the  
16 non-flowing product as "sticky" and which "tends to form clumps and adhere to machinery"  
17 such as "fish, meat and poultry." These sticky and clump forming products simply do not lend  
18 themselves to a continuous feeding apparatus which simultaneously fills multiple pockets as  
19 taught by Vogt.

20 In addition to the difference in the nature of the product, claims 1, 8 and 15 also require  
21 that an individual product cake is intermittently formed in a single or individual forming  
22 chamber. This limitation further distinguishes the present invention from Vogt.

23 The undersigned submits that these differences render claims 1, 8 and 15 clearly  
24 patentable over the Vogt reference.

25 The second reference relied upon by the Examiner is the Burton et al reference.  
26 Although the Office action identifies Burton et al as patent 5,326,568, the undersigned

1 believes that the correct patent number is 4,326,568. The Burton '568 patent does teach a  
2 packaging system for "meat chunks," but Burton requires the use of a separate filling  
3 apparatus 31 shown schematically in Fig. 1. The filling apparatus 31 (see column 3, lines 7-  
4 20) charges each container 30 with a "precisely predetermined quantity" of meat chunks into  
5 each container 30. The present invention totally eliminates the need for a separate filling  
6 apparatus while still preserving the desirable function of the filling apparatus, i.e., packing a  
7 precisely predetermined amount of product into the forming chamber. The present invention  
8 accomplishes that goal by utilizing a forming chamber wherein an end wall of the forming  
9 chamber is a movable and adjustable metering shoe. The fact that the metering shoe is  
10 adjustable facilitates the charging of the forming chamber with the correct weight of material  
11 without requiring an entirely separate mechanism such as the filling apparatus 31 required by  
12 Burton. Pertinent case law indicates that the elimination of a separate apparatus while  
13 preserving the desirable function of that apparatus is a significant indicia of invention (see In  
14 re Edge, 359 F.2d 896, 149 USPQ 556 [CCPA 1966], noted at MPEP, page 2100-134, Rev.  
15 1, Feb. 2003). Because of the elimination of the separate filler mechanism, the undersigned  
16 submits that claims 1, 8 and 15 are clearly patentable over the Burton reference.

17       The third reference cited by the Examiner is the Focke et al patent 5,174,088. The  
18 Focke reference is limited to the use of a flowable material such as ground up tobacco, as  
19 shown in Fig. 6, flowing downwardly from conveying trough 53 into collecting chamber 46.  
20 Furthermore, as shown best in Fig. 5, Focke is simultaneously filling a number of recesses  
21 continuously with a single supply of flowable tobacco. For reasons noted above, prior art  
22 mechanisms that relate to flowable material being packed simultaneously into multiple  
23 recesses are simply not usable for dealing with the sticky and clumpy products packaged by  
24 the present invention. Furthermore, the present invention differs from Focke in that the  
25 present invention is an intermittent operation which fills a single forming chamber with product  
26 on an intermittent basis. For these reasons, the undersigned submits claims 1, 8 and 15 are

1 clearly not anticipated by Focke et al.

2       The fourth reference relied upon by the Examiner is the Russell patent 3,889,448.  
3 Russell pertains to the packing of butter by using an extrusion screw shown as 2 in Fig. 2.  
4 The mechanism simply continuously extrudes a length of butter and cuts off a predetermined  
5 length. In contrast, the present invention is limited to materials which tend to clump and  
6 adhere to machinery such as extrusion screws. The undersigned submits that the extrusion  
7 device as shown in Russell would be wholly unusable for the sticky and clumping products  
8 handled by the present invention. Furthermore, the present invention utilizes a movable and  
9 adjustable metering shoe to form one wall of the forming chamber. Russell teaches no such  
10 mechanism. For the above reasons, the undersigned submits that the present invention as  
11 represented by claims 1, 8 and 15 are clearly not anticipated by Russell.

12       The fifth reference cited by the Examiner under 35 U.S.C. § 102 is Long 5,987,858.  
13 The Long reference teaches a mechanism for densifying insulation material which flows easily  
14 as illustrated by Fig. 6. The present invention deals with an entirely different type of product  
15 such as tuna fish which tends to stick to the packaging material and form clumps. The simple  
16 gravity feed mechanisms illustrated in Long would be wholly unsuitable for packaging sticky  
17 tuna fish, which would tend to adhere to the side walls of the feed mechanism. Furthermore,  
18 the present invention utilizes a movable and adjustable metering shoe to form one wall of the  
19 forming chamber. This feature allows the present invention to constantly adjust the size of the  
20 forming chamber to assure a precisely predetermined amount of weight of material being fed  
21 into the forming chamber. Long does not teach or suggest such a movable and adjustable  
22 metering shoe.

23       Claims 7 and 11 stand rejected under 35 U.S.C. § 103(a) over Burton in view of  
24 Bullock. Claims 7 and 11 specifically reference the product being packaged as tuna fish. As  
25 noted above, the Burton reference requires a totally separate filling apparatus 31 which is  
26 completely eliminated by the present invention. Bullock teaches a machine for packing tuna



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1 fish into cans, as opposed to pouches, as taught by the present invention and specified in  
2 claims 1, 8 and 15. Furthermore, Bullock does not teach the use of a movable and adjustable  
3 metering shoe as forming one wall of a forming chamber for a product cake. Even if Bullock  
4 were combined with Burton, the combination would still require the use of a separate filling  
5 mechanism 31 to charge each of the containers 30. As noted above, all claims of the present  
6 invention involve the use of a movable and adjustable metering shoe which effectively  
7 eliminates the separate filling apparatus while preserving its desired function of metering  
8 precise quantities of product into the forming chamber.

9 The undersigned submits that, for the reasons noted above, the present invention for  
10 the first time provides a method and apparatus capable of packaging non-flowing and sticky  
11 materials such as fish, meat and poultry into pouches, utilizing a fairly simple mechanism  
12 which avoids the requirement of a separate filler mechanism. The use of the movable and  
13 adjustable metering shoe as forming one wall of the forming chamber is a critical aspect of the  
14 present invention and is not taught or suggested in the prior art.

15 For the above reasons, the undersigned submits that all claims pending in the  
16 application now patentably distinguish the invention over the cited prior art and any  
17 combination of the cited prior art. Allowance of all claims is therefore requested.

18 Respectfully submitted,

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